In the Supreme Court of the United States

OCTOBER TERM, 1971

No. 71-1345

JAMES B. CRISMON, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

After a jury trial in the United States District Court for the Eastern District of Missouri, petitioner was found guilty on eight counts of bank and mail fraud, in violation of 18 U.S.C. 656, 1005 and 1341. He was sentenced to imprisonment for five years on Counts I and II, to run consecutively, and for five years on the remaining counts, to run concurrently to the sentence on Counts I and II, and was fined

$5,000. The court of appeals affirmed without opinion (Pet. App. A).

The evidence at trial showed that petitioner, president of the First State Bank of Bonne Terre, Missouri, had defrauded the bank of amounts totalling more than $277,000. Bank examiners had begun an investigation of petitioner's bank prior to August 1970. Over petitioner's objection, the trial judge admitted testimony of Mrs. June Saltz that she had been petitioner's mistress and that petitioner took her with him on a trip to Texas, California and Mexico in August 1970. Petitioner's sole contention, that this was reversible error, is without merit.

Mrs. Saltz testified that petitioner told her he had brought $50,000 cash on the trip and that he might stay in Mexico permanently (see Pet. App. B, pp. 4-7). This evidence was clearly relevant to show that petitioner contemplated fleeing during the investigation of his bank. It is settled that evidence of flight is admissible to show consciousness of guilt. See, *e.g.*, *Shorter* v. *United States*, 412 F. 2d 428 (C.A. 9), certiorari denied, 396 U.S. 970; *United States* v. *King*, 373 F. 2d 813 (C.A. 2), certiorari denied, 389 U.S. 881; *United States* v. *Waldman*, 240 F. 2d 449 (C.A. 2). Although petitioner had not at the time been charged with any crime, an offer of proof of flight does not depend on the existence of an indictment. See *Gicinto* v. *United States*, 212 F. 2d 8 (C.A. 8). Mrs. Saltz's testimony that she was petitioner's mistress was relevant to establish her credibility and the foundation of her knowledge of the in-

formation to which she testified. See *Scalf* v. *Bennett*, 408 F. 2d 325, 329 (C.A. 8), and cases there cited; see also *United States* v. *Kompinski*, 373 F. 2d 429, 432 (C.A. 2). Petitioner's assertion that the prejudicial effect of his relationship with Mrs. Saltz so far outweighed its probative value as to require exclusion of the testimony was within the discretion of the trial judge (see *Scales* v. *United States*, 367 U.S. 203, 255-256), and no abuse of discretion is shown here.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ERWIN N. GRISWOLD,
Solicitor General.

JUNE 1972.

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